

**TENTATIVE RULINGS for CIVIL LAW and MOTION**  
**December 7, 2009**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department 15: (530) 406-6942

**TENTATIVE RULING**

**Case:** Apex Realty, Inc. v. Peter Chong dba Fashion Venus  
Case No. CV UD 08-225

**Hearing Date:** December 7, 2009 Department Fifteen 9:00 a.m.

Plaintiffs' motion to amend the judgment is **GRANTED**. (Code Civ. Proc., § 187; *Nec Electronics, Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

**TENTATIVE RULING**

**Case:** Coast Transit Refrigeration, Inc. v. Property Equities, LLC  
Case No. CV CV 09-1563

**Hearing Date:** December 7, 2009 Department Fifteen 9:00 a.m.

Defendant Property Equities, LLC's demurrer to plaintiff Coast Transit Refrigeration, Inc.'s complaint is **DROPPED** from calendar. Plaintiff has filed a first amended complaint. (Code Civ. Proc., § 472.)

**TENTATIVE RULING**

**Case:** Fortis Capital, LLC v. Woy  
Case No. CV G 09-810

**Hearing Date:** December 7, 2009 Department Fifteen 9:00 a.m.

Defendant Martin L. Woy's motion for reconsideration is deemed a motion to withdraw admissions deemed admitted and is **GRANTED**. (Code Civ. Proc., § 2033.300; *New Albertsons Inc. v. Superior Court* (2008) 168 Cal.App.4<sup>th</sup> 1403, 1421; Decl. of Martin Woy, Jr. ¶¶ 1-18.) Accordingly, Defendant's deemed admissions to Plaintiff's requests for admissions, set one, are **WITHDRAWN**. Defendant served Plaintiff with responses to the requests for admissions. (Decl. of Martin Woy, Jr. ¶¶ 14 & 17.)

Defendant agreed to pay Plaintiff the sanctions previously issued by this Court in the amount of \$140.00. Defendant is to pay that amount to Plaintiff by December 11, 2009.

The Court trial set for January 25, 2010, is **VACATED**.

The parties are directed to attend a case management conference set for Thursday, January 14, 2010, at 1:30 p.m. in Department 10.

Discovery is to remain open until 30 days prior to the new date set for trial. (Code Civ. Proc., §§ 2024.020 and 2033.300, subd. (c).)

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

#### **TENTATIVE RULING**

**Case:** Pavlushkina v. Westwood Vistas

**Case No. CV PO 08-915**

**Hearing Date: December 7, 2009 Department Fifteen 9:00 a.m.**

Plaintiff Venera Pavlushkina's motion to compel verifications and responses without objections to form interrogatories, special interrogatories, and demands for inspection is **DENIED**.

Plaintiff's motion was filed outside the statutory deadline. (Code Civ. Proc., § 2030.300, subd. (c); 2031.310(c).) Plaintiff's citation to *Appleton v. Sup. Ct.* (1988) 206 Cal.App.3d 632 does not assist the Court as it does not address whether the receipt of unverified responses excuses compliance with the 45 day statutory deadline (extended if responses are served by mail under Code of Civil Procedure section 1013).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

#### **TENTATIVE RULING**

**Case:** Zochlinski v. Regents

**Case No. CV PT 08-3413**

**Hearing Date: December 7, 2009 Department Fifteen 9:00 a.m.**

The Court considered the papers the petitioner filed on November 9, 2009, so that his petition may be decided on its merits.

1. Petitioner's request to present Dr. Jerold Theis' oral testimony at the hearing: The request is **DENIED WITHOUT PREJUDICE**. Evidence received at the hearing on a writ of mandate and prohibition must be by declaration or request for judicial notice without testimony or cross-examination, unless the court orders otherwise for good cause shown. (Rules of Court, rule 3.1306(a).) The petitioner has not shown good cause for the presentation of Dr. Theis' oral testimony at the hearing. Petitioner does not explain why he could not have submitted Dr. Theis' declaration prior to the hearing. Petitioner has already submitted evidence concerning

the “three paper rule”. Petitioner does not show that Dr. Theis’ testimony will be new or different from the evidence already presented and why such testimony is necessary and helpful to the issues before the Court.

2. Petitioner’s request for judicial notice filed on May 14, 2009: The requests numbered 1, 7, 12, 20-21 and 23-29 are **GRANTED**. (Evid. Code, § 452, subds. (a), (c) and (h).) The Court takes notice that the documents identified in the requests numbered 6, 8-11, 13, 16, and 30-38 are part of the Court’s files, but the Court does not take notice of the truth of the matters stated in these documents. (Evid. Code, § 452, subd. (d); *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4<sup>th</sup> 875, 882-883.)

3. Writ of Mandate: Petitioner seeks the immediate award of a Ph.D. degree in Genetics under the “Three-Paper Rule” (hereafter “TPR”). (Petition ¶¶ 12, 60 and 82.) Petitioner challenges (1) the Student Petitions Subcommittee’s decision to deny his petition for a Ph.D. degree under the TPR as of December, 1992, and (2) the decision by Robert Powell, Chair of the Davis Division of the Academic Senate, to deny the petitioner’s appeal of the Student Petitions Subcommittee’s decision and request for consideration by the Representative Assembly. (Petition ¶ 1.)

A. Decision by the Student Petitions Subcommittee

The record before the Court shows that regardless of its name (i.e., TPR or “use of co-authored materials” policy), there was a policy under which the UC Davis Genetics graduate group awarded Ph.D. degrees based in part on the use of articles published in scientific journals. (Pages 18 and 54 of Exhibit A to Patti Declaration; Exhibit 3 of the papers the petitioner filed on November 9, 2009, and the excerpts from Ph.D. dissertations submitted therewith.)

However, it has not been established that the decision of the Student Petitions Subcommittee to deny the petitioner’s request for a TPR-Ph.D. is arbitrary or capricious. In making its decision, the Student Petitions Subcommittee considered the petition before it, the letters of support from Dr. Gardner and Dr. Yamamoto, the articles the petitioner co-authored, and the policy regarding the use of co-authored materials. (Pages 53-54 of Patti Declaration.) The Subcommittee denied the petitioner’s request for a TPR-Ph.D. because the petitioner’s dissertation committee did not approve the use of the co-authored materials in the petitioner’s dissertation. (Page 54 of Exhibit A to Patti Declaration.) The evidentiary record supports the Subcommittee’s decision.

Under the policy in place in the early 1990s, the petitioner could have used the three published articles he co-authored as all or part of his dissertation, upon the approval of his dissertation committee and, because he was not the sole or first author of any of the published articles, the Genetics graduate group. (Page 54 of Exhibit A to Patti Declaration; Exhibit 3 of the papers the petitioner filed on November 9, 2009.)

There is no evidence that the Genetics graduate group approved or would have approved the petitioner’s use of co-authored materials. Petitioner submits excerpts from the dissertations of individuals who received a Ph.D. degree in Genetics in the 1980s and early 1990s based on a

dissertation that included co-authored material that was published in a scientific journal. In all such dissertations, the Ph.D. candidate was the first-named author in at least one of the co-authored materials used in the dissertation. Here, the petitioner was the sixth-named author in two of the articles and the third-named author in the third article.

Additionally, there is no evidence that in the early 1990s, the petitioner's dissertation committee approved a dissertation on the feline immunodeficiency virus (which is the subject of the three articles the petitioner co-authored) nor the petitioner's use of co-authored materials in his dissertation. The evidence is to the contrary. (Pages 10-13 of Exhibit A and page 35 of Exhibit B to Patti Declaration.) Petitioner's dissertation committee approved a dissertation on "The Cell Cycle and Aging" that was "in the form of an NIH RO1 grant proposal." (Page 35 of Exhibit B to Patti Declaration.)

Petitioner submits letters dated January 28, 2008, and February 1, 2008, from two members of his dissertation committee, Dr. Janet Yamamoto and Dr. Murray Gardner, and Dr. Gardner's declaration signed in 2009 to show that his dissertation committee now approves the use of the three articles the petitioner co-authored as the petitioner's dissertation. In their letters and declaration, Dr. Yamamoto and Dr. Gardner state that, although the petitioner's dissertation committee had approved a dissertation on the genetics of aging, Dr. Yamamoto and Dr. Gardner now support awarding the petitioner a Ph.D. degree in Genetics based on the feline-immunodeficiency-virus articles he co-authored.

It is questionable whether Dr. Yamamoto and Dr. Gardner's 2008/2009 statements are sufficient. Under Section V.D.1. of the Operating Procedures for the Genetics Graduate Group (page 42 of Exhibit A to Patti Declaration), a dissertation committee must have three members. Normally, at least two members of the dissertation committee must be members of the Genetics graduate group. (Page 42 of Exhibit A to Patti Declaration.) A change in the membership of the dissertation committee is made by appointment of a new committee and must be approved by Graduate Studies. (Page 42 of Exhibit A to Patti Declaration.) Under Section V.D.3. of the Operating Procedures for the Genetics Graduate Group, the dissertation committee members must reach a consensus about the thesis. (Page 43 of Exhibit A to Patti Declaration.)

Dr. Yamamoto is no longer with the UC Davis faculty, and it has not been shown that Dr. Yamamoto can still approve the petitioner's dissertation. (Pages 10-11 of Exhibit A to Patti Declaration.) Petitioner reports that Dr. Scibienski is deceased. There is no evidence of a consensus among the three members of the petitioner's dissertation committee, other than that the committee approved a dissertation on cell cycle and aging "in the form of an NIH RO1 grant proposal." (Page 35 of Exhibit B to Patti Declaration.)

B. Decision by Robert Powell, Chair of the Davis Division of the Academic Senate

Acting as Chair of the Davis Division of the Academic Senate, Mr. Powell denied the petitioner's request for reconsideration of the Student Petitions Subcommittee's decision because Mr. Powell determined that the Student Petitions Subcommittee had already carefully considered the petition and need not revisit the matter. (Page 64 of Exhibit A to Patti

Declaration.) Under Legislative Rulings 7.07 and 11.05, student appeals are decided by the Student Petitions Subcommittee. (Pages 15-16 of Exhibit A and Exhibit F to Patti Declaration.) The Court cannot conclude from the record before it that Mr. Powell's decision to deny reconsideration was unreasonable, arbitrary or capricious.

Mr. Powell also denied the petitioner's request to have the Representative Assembly hear his petition. Under Legislative Ruling 11.05, the Representative Assembly was not required to consider or take any action on a student petition, and the petitioner did not have a right to review by the Representative Assembly. (Pages 15-16 of Exhibit A to Patti Declaration.)

Based on the above, the petition for writ of mandate is **DENIED**.

4. Writ of Prohibition: Petitioner seeks an order that the respondents "cease any and all current and . . . future interference with Petitioners' [sic] education or career in any manner" (Petition ¶ 61) and "immediately end its "policy, custom and practice" of retaliation against individuals engaging in activities for the enforcement of their civil rights . . ." (Petition ¶ 85).

A writ of prohibition arrests the proceedings of a tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. (Code Civ. Proc., § 1102.) Petitioner did not produce evidence of any threatened or pending judicial act or any further judicial proceedings by the respondents that are without or in excess of jurisdiction. Accordingly, the writ of prohibition is **DENIED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.